

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION**

**UNITED STATES OF AMERICA**

**CRIMINAL # 5:15-cr-00223-01**

**VERSUS**

**JUDGE FOOTE**

**SHAWN D. DRIGGERS**

**MAGISTRATE HORNSBY**

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**MEMORANDUM REGARDING USE OF HEARSAY**

**IN REPORT OF DR. MARK VIGEN**

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May it please the Court:

The Court asked undersigned counsel to brief the use of hearsay in the work of Dr. Mark Vigen. The use of hearsay by experts to form an opinion is common and recognized by the Fifth Circuit. In US v 14.38 Acres of Land, 80 F.3d 1074 (5 Cir 1996), an expert opinion of the value of the land in question was based on sales data and discussions with other appraisers, brokers, and lenders. The Court stated that as a general rule, questions related to the bases and sources of an expert

opinion affect the weight to be assigned to the opinion rather than admissibility, and should be left for the jury's consideration.

In Skidmore v Precision Printing & Packaging, Inc., 188 F.3d 606 (5 Cir 1999), the Fifth Circuit held the district court did not abuse its discretion by admitting psychiatrist's testimony that plaintiff suffered post-traumatic stress disorder and that "he did not think [the plaintiff] had lied to him or fabricated her psychiatric symptoms". Subsequently, the Court cited Skidmore and stated that mental health experts are allowed to testify that symptoms appear genuine and the expert believes he or she has not been duped by a fabricated account. U.S. v Simmons, 470 F.3d 1115 (5 Cir 2006). Clearly such opinions are based upon hearsay.

To be clear, the use of interviews in the field of psychology is common and a necessary part of the science. Further, Dr. Vigen states in his report that the collateral interviews of persons other than the defendant are simply a way to ensure the veracity of statements of the subject of the testing. Finally, the Government has stated that it may call Jessica Driggers and Jennifer Harrison to testify and if they are not, then it is likely they will be called by the defense. At that point, the statements given to Dr. Vigen no longer will be hearsay.

Respectfully submitted,

s/ H. Cameron Murray .

H. Cameron Murray

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#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing document has been sent to opposing counsel via the Electronic Case Filing system, this 26<sup>th</sup> day of January, 2017.

s\ H. Cameron Murray .

H. Cameron Murray